

COTTONWOOD HEIGHTS

RESOLUTION NO. 2012-63

A RESOLUTION APPROVING ENTRY INTO AN AGREEMENT WITH COMPU-TIME CORPORATION FOR ELECTRONIC TIMECARD SOFTWARE AND MAINTENANCE

WHEREAS, the city council (the "*Council*") of the city of Cottonwood Heights (the "*City*") met in regular session on 13 November 2012 to consider, among other things, approving and ratifying the City's entry into a sale agreement (the "*Agreement*") with Compu-Time Corporation ("*Provider*") for certain electronic timecard software, maintenance and other goods and services as requested by the City's administration; and

WHEREAS, the Council has reviewed the form of the Agreement, a photocopy of which is annexed hereto; and

WHEREAS, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to approve the City's entry into the Agreement as proposed;

NOW, THEREFORE, BE IT RESOLVED by the Cottonwood Heights city council that the attached Agreement is hereby approved, and that the City's mayor and recorder are authorized and directed to execute and deliver the Agreement on behalf of the City; and be it

FURTHER RESOLVED by the Cottonwood Heights city council that any prior actions by the City's mayor and recorder to execute and deliver the Agreement on behalf of the City be, and hereby are, ratified and confirmed.

This Resolution, assigned no. 2012-63, shall take effect immediately upon passage.

PASSED AND APPROVED effective 13 November 2012.



Linda W. Dunlavy
Linda W. Dunlavy, Recorder

COTTONWOOD HEIGHTS CITY COUNCIL

By *Kelvin H. Cullimore, Jr.*
Kelvin H. Cullimore, Jr., Mayor

VOTING:

| | | |
|--------------------------|---|------------------------------|
| Kelvyn H. Cullimore, Jr. | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael L. Shelton | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| J. Scott Bracken | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Michael J. Peterson | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |
| Tee W. Tyler | Yea <input checked="" type="checkbox"/> | Nay <input type="checkbox"/> |

DEPOSITED in the office of the City Recorder this 13th day of November 2012.

RECORDED this ___ day of November 2012.

587666.1



14108 Whispering Meadows
Kingston, OK. 73439
Ofc: (405)378-2561
Fax: (877)894-1559

Sales Agreement

| | | | |
|---|----------------------------------|-----------------------------|--|
| Bill To: City of Cottonwood Heights 1265 E. Ft. Union Blvd. Suite 250 Cottonwood Heights, UT. 84047 | | Ship To: SAME | |
| Contact Candi Tanner | Telephone 801-944-7076 | Fax | |

| Item # | Qty | Description | Price | Ext. Price |
|--------|-----|---|------------|-------------|
| A | 1 | NOVAtime 4000 SaaS Per active employee / per month | \$ 3.25* | |
| B | 1 | Admin / Supervisor Logins Per active login / per month | \$ 5.00* | |
| C | 1 | Caselle Payroll Interface | \$2,000.00 | \$ 2,000.00 |
| D | 1 | Professional Implementation Services | \$1,800.00 | \$ 1,800.00 |
| | | Total Cost | | \$ 3,800.00 |

*Billed on the first of each month and due upon receipt. Customer may cancel monthly subscription service at any time with 30 days written notice.

Annual Software Service Agreement: No Charge – Included in SaaS services.

The above order is subject to the terms and conditions stated in this agreement which the customer acknowledges have been read.


Approved By:
City of Cottonwood Heights (Purchaser)

Dated: 10/24/12

Accepted By:
Compu-Time Corporation (Company)

Dated: _____

Terms and Conditions of Sale

- 1.0 **PRICES.** Prices and charges contained in any quotation, purchase order or contract are exclusive of and purchaser is responsible for all federal, state, municipal or other government excise, sales, use export/import tariffs (duties) or like taxes. Unless otherwise noted on the face of this order, prices are firm for (30) days.
- 2.0 **PAYMENT TERMS.** Unless otherwise noted on the face of this order, payment is due upon receipt of invoice. Company may require cash on delivery or stop goods in transit whenever in Company's sole discretion doubt as to Purchaser's financial responsibility arises. Pro-rata payments shall be due for partial shipments. Where Purchaser is responsible for any delay in shipment, the date of completion of goods may be treated by Company as the date of shipment for purposes of payment, complete goods shall be held at Purchaser's cost and risk, and Company shall have the right to bill Purchaser for reasonable storage and insurance expenses.
- 3.0 **CANCELLATION AND RETURNS.** Orders may be cancelled only with Company's written consent and upon payment of reasonable and proper cancellation charges. Products may be returned only when authorized in writing by Company and Purchaser shall be charged for placing returned Products in saleable condition, any sales expenses then incurred by Company, a restocking charge and any transportation costs paid by the Company.
- 4.0 **SHIPPING AND DELIVERY**
 - 4.1 Unless Purchaser specifies otherwise in writing to Company; (i) Products shall be boxed or crated as Company deems proper for protection against normal handling and extra charge shall be made for preservation, waterproofing and similar added protection of Products, and (ii) routing and manner of shipment will be at Company's discretion, and may be insured at Purchaser's expense, value to stated at order price. On all shipments of products F.O.B. Company's facility, delivery of products to the initial carrier shall constitute delivery to Purchaser and Products shall be shipped at Purchaser's risk. Any claim for loss or damage to products in transit must be made against the carrier and prosecuted by Purchaser.
 - 4.2 Delivery, shipment and installation dates are estimated dates only and, unless otherwise specified, are determined from date of receipt of complete technical data and approved drawings as such may be necessary. Company shall not be liable directly or indirectly for any delay which is due to acts beyond Company's control including but not limited to delays of carriers, delays from labor difficulties, shortages, lockouts, strikes or stoppages of any sort, fires, bad weather, accidents, failure or delay in obtaining materials, components or manufacturing facilities, acts of third parties, acts of governmental authorities or any agencies or commissions thereof, acts of war, breakdowns of equipment or communication line failures, and the estimated delivery date shall be extended accordingly.
- 5.0 **WARRANTY.**
 - 5.1 **Equipment Warranty**
 - 5.1.1 Company warrants that NOVAtime equipment shall be free from defects in materials and workmanship for a period of 90 days from date of installation.
 - 5.1.2 Company's sole responsibility under this warranty shall be to either repair, replace or give proper credit for, at Company's option, any component which is determined by Company to have defects in material or workmanship.
 - 5.1.3 Company shall, at Company's option, perform warranty work at a Company facility or at Purchaser's site. Return transportation at a Company facility shall be prepaid by Purchaser.

6.0 LIMITATION OF REMEDIES AND DAMAGES. The Company's entire liability and the Purchaser's exclusive remedy for any claim of any kind against Company shall be as follows:

6.1 In all situations involving performance or nonperformance or equipment or parts sold pursuant to these terms and conditions, Purchaser's remedy is as set forth in paragraph 5 above.

6.2 Company's liability for damages to Purchaser for any cause whatsoever, and regardless of the form of action, whether in contract or in tort including negligence, shall be limited to the purchase price for the goods for which liability is claimed.

IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY DAMAGES CAUSED BY PURCHASER'S FAILURE TO PERFORM ITS RESPONSIBILITIES, OR FOR ANY LOST PROFITS OR FOR INCIDENTAL CONSEQUENTIAL OR SPECIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR IN TORT INCLUDING NEGLIGENCE, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR AN CLAIM AGAINST COMPANY BY ANY THIRD PARTY.

7.0 ARBITRATION. Any controversy or claim arising out of or relating to this Agreement or the validity, construction, or performance of this Agreement or the breach thereof, shall be resolved by arbitration according to the rules and procedures of the American Arbitration Association as they may be amended. Such rules and procedures are incorporated herein and made a part of this Agreement by reference. The parties agree that they will abide by and perform any award rendered in any such arbitration and that any court having jurisdiction may issue a judgment based upon the award. Moreover, the prevailing party shall be entitled to reimbursement of reasonable attorney fees and costs.

8.0 PATENT AND COPYRIGHT INFRINGEMENT AND INDEMNIFICATION. Company shall defend, at its expense, any claim or action brought against Purchaser alleging that any Products manufactured by Company or its suppliers and sold hereunder infringe a United States patent or copyright, and shall pay all costs and damages finally awarded in an amount not to exceed the purchase price paid to Company for the allegedly infringing Products; provided, however, that Purchaser shall give prompt written notice of such claim to Company and shall promptly transmit to Company all papers served on Purchaser in any suit involving such claim of infringement, and provided further, that Company shall, at its option have entire charge and control of the defense of such suit. In the defense or settlement of such claim, Company may, at its option obtain for Purchaser the right to continue using the Products, replace or modify the Products so that they become non-infringing or, if such remedies are not reasonably available, grant Purchaser a credit for the Products as depreciated and accept their return. Company shall not have any liability if the alleged infringement is based upon the use or sale of the Products in combination with any other products or devices not furnished by Company or its suppliers. The foregoing expresses the Company's entire and exclusive warranty and liability with respect to patent and copyright infringement, and Company disclaims all other liability for patent and copyright infringement, including without limitation any incidental or consequential damages. Purchaser shall indemnify and hold Company harmless against any and all claims, demands, liabilities, damages, costs, and expenses (including attorney fees) resulting from or arising out of any claim of patent infringement arising out of the manufacture by Company or its suppliers of products in accordance with a design or specifications furnished by Purchaser.

9.0 PROPRIETARY DATA. All documentation, schematics, engineering or production prints, drawings, technical data, maintenance materials, test equipment or any other documents or property which is proprietary to Company or its suppliers shall remain the exclusive property of Company and shall be for Company's sole use. Unless otherwise specifically agreed to in writing, signed by an authorized officer of the Company neither Purchaser or any representative of Purchaser, shall have any right to examine or audit Company's cost accounts or books or records of any kind.

10.0 SOFTWARE LICENSE. To properly protect the proprietary trade secret and confidentiality rights of the Company (or its suppliers) in software marketed by the Company, including but not limited to diskettes and user manuals/documentation, as a distributor of Company's software or licensed software, Purchaser agrees as follows:

10.1 Purchaser shall secure, on behalf of company, execution by Purchaser's customers of a Software License Agreement in the form provided or to be provided to Purchaser by Company, on or before Purchaser delivers the software to its customer and/or installs the software on the Customer's computer. Prior to Customer's execution of the Software License Agreement, Purchaser shall complete same to fully identify the customer, the software purchased, and Purchaser's name and address. Purchaser shall provide the customer with a copy of the completed and executed Software License Agreement and Purchaser shall retain the original in its files, subject to inspection by Company at all reasonable times in the event Company, in its sole discretion, suspects a violation of the Software License Agreement by the Customer. In the event that Purchaser fails to obtain an executed copy of the Software License Agreement, Purchaser shall be subject to any and all damages, costs and attorneys' fees arising out of any suspected license violation by the customer.

10.2 Purchaser shall abide by the terms and conditions of software use set forth in the Software License Agreement as if Purchaser were a Customer in the event that Purchaser has secured software for (i) Purchaser's own use in connection with marketing or servicing the software, (ii) use internal and/or in support of Purchaser's own business.

10.3 Purchaser shall not obtain title to ownership of the software.

10.4 Company may terminate all licenses and require return of the software in the event that Purchaser fails to comply with these license terms and conditions or the terms and conditions set forth in the Software License Agreement and Company shall not be liable to Purchaser's customer for such termination or any damages resulting there from.

10.5 Purchaser's submission of an order for software on Company's Sales Order form constitutes Purchaser's agreement to the foregoing terms and conditions.

11.0 GENERAL. Company's written acceptance of Purchaser's order shall constitute a binding contract between Company and Purchaser which shall be governed by the laws of the State of Oklahoma. Company's acceptance of Purchaser's order is condition on Purchaser's order is conditioned on Purchaser's assent to the terms contained herein in lieu of those in Purchaser's purchase order. Company's failure to object to provisions contained in any purchase order related documents or communication from Purchaser shall not be deemed a waiver of the provisions of this acceptance. Any changes in the terms herein must specifically be agreed to in writing by an authorized representative of the Company before becoming binding on either Company or Purchaser. All orders or contracts must be approved, accepted or acknowledged in writing before such orders or contracts become binding on Company. These terms and conditions shall be applicable whether or not they are attached to or enclosed with the Products sold hereunder.